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ORANGE COUNTY
COASTKEEPER.
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March 22, 2019

VIA CERTIFIED MAIL

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Lake Forest, CA 92630

Matt Rayl, Registered Agent
Lake Forest Equestrian Center, Inc.
25200 Trabuco Road
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Thomas Wheeler, Director
Public Works Department
25550 Commercentre Drive, Suite 100
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Matt Rayl, President
Lake Forest Equestrian Center, Inc. d/b/a
Serrano Creek Ranch Equestrian Center
25200 Trabuco Road
Lake Forest, CA 92630

2019 APR -3 PM 4:05

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act

Dear Ms. Rose, Mr. Wheeler, and Mr. Rayl:

I am writing this letter on behalf of Orange County Coastkeeper ("Coastkeeper") in regard to violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. ("Clean Water Act"). The violations at issue are occurring on your property located at 25200 Trabuco Road, Lake Forest, CA 92630, what is known as Lake Forest Equestrian Center, Inc. d/b/a Serrano Creek Ranch Equestrian Center ("Serrano Equestrian" or "Facility"). The Facility is located on property owned and/or controlled by the City of Lake Forest ("City").

This Notice of Violations and Intent to File Suit ("Notice Letter") is being sent to you as the responsible owners and operators of Serrano Equestrian (collectively, "the Notice Recipients"). The purpose of this letter is to provide notice of the Notice Recipients' violations and also that, after the expiration of sixty (60) days from the date of this letter, Coastkeeper intends to file a legal complaint to correct the violations of the Clean Water Act occurring at the Facility.

1. INTRODUCTION

In 2018, Coastkeeper began investigating the operations at the Facility to determine if the Facility is required to obtain a permit for the discharge of pollutants into Serrano Creek. Coastkeeper believes that the Facility stables over 150 horses, which are present for the majority of the year. Coastkeeper has collected samples of storm water runoff from the Facility on two separate occasions and determined that storm water flowing from the Facility into Serrano Creek is contaminated with pollutants such as bacteria, ammonia, nutrients, and other pollutants. As a waterbody, Serrano Creek is impaired for pollutants, including those associated with activities occurring at the Facility.

Facilities that confine more than 150 horses for more than 45 days in a 12-month period are classified as Medium Concentrated Animal Feeding Operations ("CAFOs"). 40 C.F.R. § 122.23. CAFOs are point sources under the Clean Water Act. 33 U.S.C. § 1362. As point sources, CAFOs may not discharge pollutants to waters of the United States except in compliance with an NPDES permit. 33 U.S.C. § 1311(a). Failure of the Notice Recipients to obtain an NPDES permit for the Facility is therefore a violation of Section 301 of the Clean Water Act. *See* 40 C.F.R. § 122.21(d)(1).

Horse CAFOs produce a substantial amount of pollutants including manure[1], bedding, and process wastewater[2] from the horse wash racks. Such animal waste and process wastewater discharged from the Facility are and/or contain "pollutants," as defined in the Clean Water Act Section 502(6), 33 U.S.C. § 1362(6) and 40 C.F.R. § 122.2. Manure, for example, contains high levels of phosphorus and nitrogen.

As a result of unlawful discharges to Serrano Creek, unlawful land application of process wastewater, and storm water runoff from areas where horse waste is stored, the Notice Recipients have caused and continue to cause discharge of animal waste, nitrates, nitrites, nitrogen, ammonia, phosphorus, bacteria and endotoxin, sulfate and other pollutants into waters of the United States, resulting in substantial harm to public health, welfare, and the environment. Serrano Creek is a 303(d) listed impaired water body for several pollutants known to be present at the Facility, including unionized ammonia and indicator bacteria. San Diego Creek and Newport Bay, the waterbodies downstream of Serrano Creek, are likewise impaired for indicator bacteria, sedimentation/siltation, nutrients, and other pollutants associated with activities at the Facility. Unpermitted discharges from the Facility cause and contribute to the impairment of Serrano Creek and the downstream San Diego Creek and Newport Bay.

In addition to pollutants typically associated with CAFOs, Coastkeeper is informed and believes that trash and debris are discharged from the Facility into waters of the United States. The Facility has posted videos on social media accounts operated by the Facility showing footing material likely runs off from riding rings into Serrano Creek. Coastkeeper is informed and believes that the footing used at the Facility is a combination of sand, recycled rubber shoes, and other unknown synthetic textiles. Further videos show feed bags and other trash sources stored adjacent to Serrano Creek that likely end up washed into the creek. The discharge of footing material and other sources of trash is a violation of the Clean Water Act.

As set forth in this Notice Letter, observations made by Coastkeeper investigators on multiple occasions indicate that the Notice Recipients are and continue to be in violation of the Clean Water Act. Generally, the property owners and/or operators have not obtained a CAFO permit pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342, and routinely discharge pollutants into Serrano Creek. Each day that pollutants such as manure, process wastewater, trash,

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[1] The term "manure" is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal. 40 C.F.R. § 122.23(b)(5).

[2] "Process wastewater" means water directly or indirectly used in the operation of an animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding. 40 C.F.R. § 122.23(b)(7).

and footing are discharged constitutes a separate violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that 60 days prior to the initiation of a civil action against any alleged violator under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of her intent to sue to the discharger, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator for the EPA for the region in which such violation is alleged to have occurred, and the Chief Administrative Officer of the water pollution control agency for the State in which the violation is alleged to have occurred. 33 U.S.C. § 1365(b)(1)(A); 40 C.F.R. § 135.2(a)(1). This letter addresses at least 1,825 violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

2. FACTUAL BACKGROUND

2.1 Orange County Coastkeeper

Coastkeeper is a nonprofit organization whose mission is to protect the region's water resources so they are swimmable, drinkable and fishable for present and future generations. Coastkeeper is an environmental group organized as a nonprofit corporation in accordance with the laws of the State of California. Coastkeeper's offices are located at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper is dedicated to protection, preservation, conservation, and restoration of waters, marine habitats and watersheds, through research, education, community action and citizen enforcement. Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act and, where necessary, initiates enforcement actions on behalf of itself and its members.

Coastkeeper and its individual members have an interest in the preservation and use of waters in and around Lake Forest, including, but not limited to, Serrano Creek, San Diego Creek and its tributaries, Newport Bay, and the Pacific Ocean. Specifically, Coastkeeper's members sail, swim, picnic, fish, hike, surf, paddle, standup paddleboard, kayak, row, wade, bike, and enjoy the wildlife in and around these waters, including the reach at issue in this Notice Letter. The actions of the Notice Recipients individually, collectively, and in combination with the activities of other landowners adjacent to Serrano Creek, result in numerous injuries to Coastkeeper's members' interests, such as: loss, destruction or damage to wetlands and waterways; diminished aesthetic enjoyment; increased flooding; loss of open space and habitat for wildlife, including wading birds and federally protected species; degraded water quality; and diminished quality of life. The ability of Coastkeeper's members to engage in such activities and to use and enjoy Serrano Creek and the downstream receiving waters is harmed by Notice Recipients' activities.

2.2. The City of Lake Forest

The City of Lake Forest is a municipality incorporated under the laws of the State of California. The Department of Public Works and Engineering ("Department") is a department of the City. The City and its Departments have offices at 25550 Commercentre Drive, Suite 100, Lake Forest, CA 92630. The Department's current Director is Thomas Wheeler. The City's current City Manager is Debra Rose. The City and/or the Department are the owner(s) and/or operator(s) of the Facility.

The Clean Water Act provides that the owner of the land and the operator of the land where operations are taking place are responsible for compliance with the provisions of the Clean Water Act. The Facility is located at 25200 Trabuco Road, Lake Forest, CA 92630. Information available to Coastkeeper indicates that the site's Assessor Parcel Number ("APN") is 614-291-50. The Facility is approximately 7.61 acres and is located in Serrano Creek Community Park.

In 1984, the County of Orange ("County") entered into a twenty-year lease with Serrano Equestrian. In 1992, the County transferred its interest in the land to the City as a result of the City's incorporation. In 2006, the City executed a lease with Serrano Equestrian that was amended in 2014, and that is effective until 2026. Under the terms of the lease, Serrano Equestrian is required to provide boarding services for equines, horse training, horseback riding lessons, tack storage, and equestrian related community services. This Notice Letter is being sent to the City as an owner and operator of the Facility.

2.3. Lake Forest Equestrian Center, Inc. d/b/a Serrano Creek Ranch Equestrian Center

Lake Forest Equestrian Center, Inc. is an active California corporation with its principal place of business located at 25200 Trabuco Road, Lake Forest, CA 92630. The registered agent for service of process is Matt Rayl, located at the same address. Lake Forest Equestrian Center, Inc. does business under the name "Serrano Creek Ranch Equestrian Center" and "Serrano Creek Ranch." It is the lessee of the property described above, and is required to provide boarding services for equines, horse training, horseback riding lessons, tack storage, and equestrian related community services under the terms of the lease with the City.

Based upon publicly available information, Serrano Equestrian provides equestrian stabling, riding lessons, including therapeutic riding, and also operates a composting business called Serrano Creek Soil Amendments. Serrano Equestrian has stables for at least 160 horses, and is permitted for up to 200 horses with OC Animal Care, an agency of the County of Orange. The Notice Letter is also addressed to Serrano Creek Ranch Equestrian as the operator of the Facility.

Collectively, the City and Serrano Equestrian are the owners and/or operators of the Facility and responsible parties under the Clean Water Act.

2.4. Receiving Waters

With every significant rainfall event, millions of gallons of polluted storm water originating from operations such as Serrano Equestrian pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from these types of operations contribute to the impairment of downstream waters and aquatic-dependent wildlife. These contaminated discharges can, and must, be controlled for the ecosystem to regain its health.

Polluted discharges from CAFOs such as Serrano Equestrian can contain high concentrations of indicator bacteria, nitrogen, phosphorus, ammonia, chemical oxygen demand ("COD"), biological oxygen demand ("BOD"), total suspended solids ("TSS"), trash, and other pollutants. Discharges of polluted storm water to Serrano Creek, San Diego Creek, Newport Bay,

and the Pacific Ocean pose threats to the public, dramatically affect the use and enjoyment of the surrounding environment, and adversely affect the aquatic environment.

The Facility is located immediately adjacent to Serrano Creek, which receives storm water runoff from the Facility via sheet flow and through manmade conduits. Serrano Creek is a roughly 7.5-mile tributary of San Diego Creek, with its headwaters originating in the Santa Ana Mountains near Cleveland National Forest. It flows southwest through Lake Forest before entering San Diego Creek. San Diego Creek flows into Newport Bay, which empties into the Pacific Ocean. These waters are collectively referred to herein as the "Receiving Waters."

The Receiving Waters are ecologically sensitive areas. Although pollution and habitat destruction have drastically diminished once-abundant and varied species, these waters are still essential habitat for dozens of fish and bird species as well as macro-invertebrate and invertebrate species. Storm water and non-storm water contaminated with sediment, bacteria, nutrients, and other pollutants harm the special aesthetic and recreational significance that the Receiving Waters have for people in the surrounding communities. The public's use of local waterways exposes many people to harmful bacteria and other contaminants in storm water discharges. Non-contact recreational and aesthetic opportunities, such as wildlife observation, are also impaired by polluted discharges to the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the *Santa Ana River Basin Water Quality Control Plan* ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The existing and/or potential Beneficial Uses for Serrano Creek and Reach 1 and 2 of San Diego Creek include, at a minimum: Groundwater Recharge, Water Contact Recreation, Non-Contact Water Recreation, Warm Freshwater Habitat, and Wildlife Habitat. The existing and potential Beneficial Uses of Upper Newport Bay include: Water Contact Recreation, Non-contact Water Recreation, Commercial and Sportfishing, Preservation of Biological Habitats of Special Significance, Rare, Threatened or Endangered Species, Spawning, Reproduction and Development, Marine Habitat, Shellfish Harvesting, and Estuarine Habitat. The existing and potential Beneficial Uses of Lower Newport Bay include: Water Contact Recreation, Non-contact Water Recreation, Commercial and Sportfishing, Wildlife Habitat, Rare, Threatened or Endangered Species, Spawning, Reproduction and Development, Marine Habitat, Shellfish Harvesting, and Navigation. *See* Basin Plan at Table 3-1.

According to the 2016 303(d) List of Impaired Water Bodies, Serrano Creek is impaired for Indicator Bacteria, Ammonia (unionized), Benthic Community Effects, pH, and Toxicity. Reach 2 of San Diego Creek is impaired for indicator bacteria, nutrients, sedimentation/siltation, benthic community effects, and toxicity. San Diego Creek, Reach 1 is impaired for indicator bacteria, nutrients, sedimentation/siltation, benthic community effects, DDT, malathion, selenium, toxaphene, and toxicity. Upper Newport Bay is impaired for indicator bacteria, nutrients, sediment/siltation, toxicity, chlordane, copper, DDT, and malathion. Lower Newport Bay is impaired for indicator bacteria, nutrients, sedimentation/siltation, chlordane, copper, DDT, PBCs, pesticides, and toxicity.[3] Polluted discharges from CAFOs such as Serrano Equestrian contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depends on these waters.

[3] Integrated Report, *available at:* https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml.

Serrano Creek is a "water of the United States" as defined in the Clean Water Act. 33 U.S.C. § 1362(7). "Waters of the United States" includes waters that are tributary to those subject to the ebb and flow of the tide. *See* 33 C.F.R. § 328.3(a)(5); 40 C.F.R.§ 230.3(s). The waters of Newport Bay are subject to the ebb and flow of the tides, and were historically used for the harvesting of shell fish sold in interstate commerce. San Diego Creek and Serrano Creek are tributary to Newport Bay. *See* 33 C.F.R. § 328.3(a)(5). Therefore, Serrano Creek – a relatively permanent body of water tributary to the navigable in fact Newport Bay is water of the United States. *United States v. Riverside Bayview Homes, Inc.*, 474 U.S. 121, 138 (1985).

3. LEGAL BACKGROUND OF CONCENTRATED ANIMAL FEEDING OPERATIONS

Section 301 of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into waters of the United States by any person from a point source except in accordance with certain provisions under the Clean Water Act, including the requirement for a discharge to be authorized under Section 402, 33 U.S.C. § 1342. When Congress passed the Clean Water Act in 1972, it specifically included the term CAFO within the definition of a point source. A point source is defined as:

> "[A]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, ***concentrated animal feeding operation***, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture." 33 U.S.C. § 1362(14)(Emphasis added).

In 1976, EPA revised its regulations in response to a court case holding that the EPA could not exempt certain categories of point sources from NPDES permit requirements.[4] The refined regulations defined which facilities were CAFOs, and therefore regulated as point sources under the Clean Water Act and established permitting requirements for CAFOs.[5] The types of CAFO facilities covered by this definition have remained nearly identical for over forty years.

In order to be a CAFO, the facility must meet a two-part test. First, the facility must be an Animal Feeding Operation ("AFO"). An AFO is:

> "[A] lot or facility (other than an aquatic animal production facility) where the following conditions are met:
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> (i) Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained[6] for a total of 45 days or more in any 12–month period, and

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[4] *NRDC v. Train*, 396 F. Supp. 1393 (D.D.C. 1975), *aff'd NRDC v. Costle*, 586 F.2d 1369 (D.C. Cir. 1977).
[5] 41 FR 11458 (Mar. 18, 1976).
[6] The EPA interprets *maintained* to mean that the animals are confined in the same area where waste is generated or concentrated. Areas where animals are maintained can include areas where animals are fed and areas where they are watered, cleaned, groomed, milked, or medicated. *Source: NPDES Permit Writers' Manual for CAFOs,* https://www.epa.gov/sites/production/files/2015-08/documents/cafo_permitmanual_chapter2.pdf., 2-2 (Last Accessed Mar. 19, 2019).

> (ii) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility." 40 C.F.R. § 122.23(b)(1).

The EPA considers an animal to be at the facility for a full day if it is at the facility for any portion of a day.[7] This definition includes, for example, "dairy cows that are brought in from pasture for less than an hour to be milked are counted as being confined [...] for the day."[8] Additionally, the 12 month period is any 12-month period and need not correspond with a calendar year. The same animal is not required to remain on the lot for 45 days or more for the facility to be defined as an AFO, and the 45 days need not be consecutive.[9] The EPA further clarifies that crops, vegetation, forage growth, or post-harvest residues does not include incidental growth on small portions of the confinement area.[10]

Second, facilities that qualify as an AFO may be defined as a CAFO depending on the type of animal and the number confined. For horse facilities, a site is classified as a large CAFO if there are 500 or more horses. 40 C.F.R. 122.23(4)(vi). A horse facility is a medium CAFO if it has 150-499 horses and it either: (1) discharges "into waters of the United States through a man-made ditch, flushing system, or other similar man-made device"; or (2) "[p]ollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation." 40 C.F.R. § 122.23(b)(6). A system is a man-made device if human action was involved in creating the conveyance, even if natural materials were used to form it.[11] The device need not reach waters of the United States; it is sufficient that wastes being discharged flow through the man-made device.[12]

For facilities smaller than a medium CAFO, the EPA or Regional Board may designate any AFO as a CAFO if it determines that the AFO is a significant contributor of pollutants to waters of the United States. 40 C.F.R. § 122.23(c). In other words, an AFO is a CAFO if it meets the regulatory definition of a large or medium CAFO, 40 C.F.R. parts 122.23(b)(4) or (6), or has been designated a CAFO, 40 C.F.R. part 122.23(c), by the Regional Board or the EPA.[13]

Once a facility has become a CAFO, it is prohibited from discharging pollutants to waters of the United States except in compliance with an NPDES permit.[14] The CAFO must be covered by an NPDES permit at the time that it discharges. 40 C.F.R. § 122.23(f). Unpermitted discharges of manure, process wastewater, or other pollutants from a CAFO's confinement area, waste storage lagoons, slurry pipes, and other waste handling appurtenances are prohibited by section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).[15] So too are discharges from land application areas under the control of the CAFO operator to the extent waste was not applied in accordance with site-specific nutrient management plans ("NMP"). 40 C.F.R. § 122.23(e). All CAFOs are required to implement an NMP as a condition of their permit whether they land-apply waste or not.[16]

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[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.* at 2-9.
[12] *Id.*
[13] *Id.* at 2-5.
[14] 33 U.S.C. § 1311(a).
[15] *See Community Ass'n for Restoration of the Env't v. Sid Koopman Dairy*, 54 F. Supp. 2d 976, 981 (E.D. Wash. 1999).
[16] 40 C.F.R. § 122.42(e)(1).

The requirements of an NPDES permit for a CAFO are the same as those issued to other point sources. The CAFO permit must contain effluent limitations, monitoring and reporting requirements, record-keeping requirements, special conditions, and standard conditions to ensure the CAFO is complying with the Clean Water Act.[17] Like all NPDES permits, a CAFO permit must include technology-based effluent limitations ("TBELs"). However, a CAFO permit must also include more stringent water quality-based effluent limitations ("WQBELs") when such limitations are necessary to meet water quality standards when those standards are not being met. Additionally, all CAFO permits must include a requirement to develop and implement an NMP, which, at a minimum, contains best management practices necessary to meet enumerated requirements and applicable effluent limitations and standards. 40 C.F.R. § 122.42(e)(1). Those enumerated requirements include: (1) manure and process wastewater storage; (2) management of mortalities; (3) diversion of clean water from the production area[18]; (4) prevention of direct contact of confined animals to waters of the United States; (5) chemical and contaminant management of manure, litter, process wastewater, storm water storage or treatment; (6) conservation practices; (7) protocols for testing manure, litter, process wastewater, and soil; (8) protocols for applying manure, litter, or process wastewater in accordance with the site-specific NMP; and (9) record keeping. *Id.* The terms of the NMP are enforceable effluent limitations that must be included in the permit.[19] Revisions to NMPs during the course of the permit may require the NPDES permit to be modified.[20]

Section 505 of the Clean Water Act, 33 U.S.C. § 1365, authorizes citizen enforcement for violations of any effluent standard or limitation in effect under the Clean Water Act, including the failure to obtain an NPDES permit. 33 U.S.C. § 1365(f)(5).

4. NOTICE RECIPIENTS' FAILURE TO OBTAIN A CAFO PERMIT

4.1 Serrano Creek Ranch Equestrian is a Medium CAFO

Serrano Equestrian meets the regulatory definition of an AFO. An AFO is a facility where animals are confined and fed or maintained for a total of 45 days or more in a 12-month period where crops, vegetation, or forage growth are not maintained in the normal growing season. 40 C.F.R. § 122.23. Based on information and belief, horses are stabled at the Facility year-round and are confined to their stables when they are not in use by riders. No crops are sustained at the Facility, and horses are not permitted to graze. Stall maps for the Facility show that there are at least 160 permanent stalls, and publicly available documents indicate that the Facility is permitted to stable up to 200 horses through OC Animal Care.

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[17] *NPDES Permit Writers' Manual for CAFOs*, https://www.epa.gov/npdes/npdes-permit-writers-manual-concentrated-animal-feeding-operations, Ch. 4 (Last Accessed March 20, 2019).

[18] "Production area" is defined to mean, in relevant part, those parts of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes, but is not limited to, stall barns, free stall barns, medication pens, walkers, animal walkways, and stables. The manure storage area includes, but is not limited to, runoff ponds, storage sheds, stockpiles, liquid impoundments, and compost piles. The raw materials storage area includes but is not limited to feed silos and bedding materials. The waste containment area includes, but is not limited to, areas within berms and diversions which separate uncontaminated storm water. Also included are any areas used in the storage, handling, treatment, or disposal of mortalities. *See* 40 C.F.R. § 122.23(b)(8).

[19] 40 C.F.R. §§ 122.23(h)(1), 122.42(e)(5); *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005).

[20] 40 C.F.R. § 122.42(e)(6).

Medium CAFOs must also (1) discharge "into waters of the United States through a man-made ditch, flushing system, or other similar man-made device"; or (2) "[p]ollutants are discharged directly into waters of the United States which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation." 40 C.F.R. § 122.23(6). Videos posted on social media accounts operated by the Facility that show storm water passing directly through stables, coming into contact with manure and other pollutants, and then immediately discharging into the adjacent Serrano Creek. Facility drainage maps published in a newsletter to boarders illustrate internal storm water flow patterns.[21] In addition to the Facility's videos on social media, Coastkeeper staff have made independent observations of storm water flowing through the stabling areas and exiting the Facility gate adjacent to the public park on the other side, then discharging into Serrano Creek. Thus, the Facility meets the regulatory definition of a medium CAFO.

4.2 Serrano Equestrian is a Point Source Unlawfully Discharging Pollutants into Waters of the United States Without NPDES Permit Coverage

Serrano Equestrian does not have the required NPDES permit coverage authorizing the Facility to discharge pollutants into waters of the United States. 33 U.S.C. § 1342. The Facility's unpermitted discharge of manure, process wastewater and other pollutants from the confinement areas to Serrano Creek violates Section 301 of the Clean Water Act. 33 U.S.C. §1311. The Facility is a medium CAFO, and by definition, a point source. 33 U.S.C. § 1362. In order to obtain authorization to discharge under an NPDES permit, the CAFO owner or operator must either apply for an individual NPDES permit or submit a notice of intent for coverage under an NPDES general permit. 40 C.F.R. § 122.23(d)(1). Upon information and belief, the Facility does not have an individual NPDES permit to control CAFO discharges. Upon information and belief, the Facility is not enrolled in, nor does it qualify for, any general NPDES permit or waiver under either the Regional Water Quality Control Boards for the San Diego or Santa Ana Regions. Similarly, upon information and belief, the Facility is not enrolled in, nor does is it qualify for, any general NPDES permit authorized by the State Water Resources Control Board. Every day the Facility operates without an NPDES permit is a separate and distinct violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

4.3 Effluent Limitations Applicable to CAFOs

Pursuant to the Clean Water Act Section 402, 33 U.S.C. § 1342, the State may issue an NPDES permit which authorizes the discharge of pollutants into navigable waters of the United States, upon the condition that such discharge will meet all applicable requirements of the Clean Water Act. If issued, the state is directed to prescribe conditions for NPDES permits to assure compliance with the requirements of the Clean Water Act, including conditions on data and information collection, reporting, and other such requirements as the state deems appropriate. Among the conditions and limitations prescribed in the NPDES permits issued under the Clean Water Act Section 402(a), 33 U.S.C. § 1342(a), are effluent limitations. Effluent limitations, as defined in the Clean Water Act Section 502(11), 33 U.S.C. § 1362(11), are any restrictions on the quantity, rate, and concentration of chemical, physical, biological, and other constituents discharged from point sources into navigable waters, including schedules of compliance.

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[21] http://serranocreekranch.com/past_news/2017-11%20SCR%20Newsletter.pdf. (Accessed: March 22, 2019).

NPDES permits have five general provisions: technology-based effluent limitations ("TBELs"), water quality-based effluent limitations ("WQBELs"), monitoring and reporting requirements, standard conditions, and special conditions. TBELs are included in all NPDES permits to achieve a level of treatment of pollutants for point source discharges on the basis of the applicable level of control according to technologies specific to that industry. All NPDES permittees must achieve compliance with TBELs. 33 U.S.C. § 1311(b).

TBELs and standards for CAFOs must address all discharges from a CAFO, including those from production areas and land application areas. 40 C.F.R. § 122.42(e).[22] All CAFOs are required control these discharges by developing and implementing a NMP that includes best management practices necessary to ensure: (i) adequate storage of manure and process wastewater; (ii) proper management of mortalities; (iii) that clean water is diverted from the production area; (iv) the prevention of direct contact of confined animals with waters of the United States; (v) that chemicals and other contaminants are not disposed of in any manure, litter, process wastewater, or storm water storage; (vi) the identification of appropriate conservation measures; (vii) the identification of protocols for testing soils, manure, and process wastewater; (viii) the establishment of protocols to apply manure or process wastewater to land; and (ix) the identification of specific records that will be maintained to document the implementation and management of the above described practices. 40 C.F.R. § 122.42(e). Terms of the site specific NMP are incorporated as terms and conditions of the CAFO's NPDES permit as of the date of permit coverage authorization and are enforceable effluent limitations.[23] Failure to comply with a CAFO's NMP as incorporated into its NPDES permit is a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

Where TBELs are insufficient to meet applicable water quality standards, an NPDES permit must also include more stringent WQBELs designed to achieve those standards. 33 U.S.C. §§ 1311(b)(1)(C), 1342(a). The Clean Water Act requires that all NPDES permits include limitations to control all pollutants that could be discharged at a level that will cause, have the reasonable potential to cause, or contribute to an exceedance of any water quality standard.[24] That includes WQBELs for the production area, land application area, and all other discharges covered by the NPDES permit.[25] Serrano Equestrian discharges to Serrano Creek, San Diego Creek, and Newport Bay, all waterbodies impaired for pollutants associated with CAFO discharges. General NMP standards based solely on TBELs are insufficient to protect discharges from the Facility to the receiving waters. Discharges by Facility cause and contribute to the exceedance of downstream water quality standards demanding WQBELs be incorporated into any NMP.

Coastkeeper is informed and believes, and thereon alleges, that the Facility lacks a NMP, which would include TBELs and WQBELs. Even if Serrano Equestrian had an NMP that meets the requirements described above, information available to Coastkeeper indicates that the Facility would be in violation of its NMP. For example, any NMP would require that the facility identify appropriate conservation practices be implemented, such as an appropriate buffer to control runoff of pollutants into waters of the United States. 40 C.F.R. § 122.42(e)(vi). Information available to

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[22] The land application area includes all land under the control of the CAFO owner or operator, including where the CAFO owns, rents, or leases the land to which manure from the production area is applied. 40 C.F.R. § 122.23(e)(3).
[23] 40 C.F.R. §§ 122.23(h)(1), 122.42(e)(1), 122.42(e)(5); *Waterkeeper Alliance v. EPA*, 399 F.3d 486, 502 (2d Cir. 2005).
[24] 40 C.F.R. §§ 122.4(d), 122.44(d).
[25] *See* 73 Fed. Reg 70,418, 70,458-59.

Coastkeeper indicates that there is no buffer between animals in confinement and the adjacent Serrano Creek that would allow pollutants to be naturally filtered through a bioswale or similar best management and/or conservation practice. Information available to Coastkeeper further indicates that protocols for testing manure and soil have not been implemented as required by 40 C.F.R. § 122.42(e)(vii). Inspection reports obtained from the County document compost piles comprised of manure were at temperatures below the minimum temperature required to kill bacteria. Activities observed and documented at the Facility are inconsistent with NMP requirements for any regulated CAFO.

An NMP is a plan that CAFOs must follow on a daily basis to ensure that the facility is not contributing to the further degradation of surface water quality. Every day the Facility operates without an NMP as part of its NPDES permit is a separate and distinct violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311.

4.4 Serrano Equestrian Discharges Pollutants Into Waters of the United States

Coastkeeper is informed and believes that pollutants from the Facility have been, and are continually, discharged to Serrano Creek. Pollutants include, but are not limited to, horse manure, bedding, sediment, equine footing, trash, and other pollutants associated with equine operations. Coastkeeper is further informed that the Facility has ongoing storm water and non-storm water discharges of pollutants into Serrano Creek. When it rains, storm water falls onto the facility and runs through riding rings, stabling areas, horse walkways – coming into direct contact with manure, bedding, footing, feed, and trash before discharging to Serrano Creek. Water flows generally towards the adjacent public park and over the bank of Serrano Creek, carrying with it pollutants including bacteria, nitrogen, phosphorus, and trash.

Coastkeeper staff has conducted three inspections of the Facility from the adjacent public park, and observed storm water runoff from the Facility. During two of those inspections Coastkeeper was able to collect storm water samples that were analyzed by a California certified independent laboratory for various pollutants. On December 6, 2018, Coastkeeper's sample shows that E. coli indicator bacteria levels were 35,000 MPN/100ml, nearly 278 times higher than the water quality objective of 126 MPN/100ml as set forth in the Basin Plan. Basin Plan, 4-16. Coastkeeper also collected a storm water sample on January 14, 2019, and the concentration of E. coli indicator bacteria was again 35,000 MPN/100ml. Serrano Creek, as mentioned above, is impaired for indicator bacteria. Other pollutants were found in extremely high concentrations including, but not limited to, ammonia, nitrogen, TSS, and sulfate. As previously stated, the receiving waters are impaired waterbodies the same pollutants contained in the Facility's discharges: indicator bacteria, nitrogen, ammonia, TSS, and others. Coastkeeper believes and thereon alleges that each time it rains at the Facility, polluted water is discharged from the facility without a permit. Unlawful discharges will occur each time it rains until such a time as the Facility gains NPDES permitting and implements an approved Nutrient Management Plan. Each discharge of pollutants into waters of the United States without a CAFO permit is a violation of Section 301 of the Clean Water Act, 33 U.S.C. §1311.

Coastkeeper is further informed and believes that pollutants may also be discharged from the Facility during dry weather. For example, process wastewater from horse wash racks on the Facility may be designed to drain directly or indirectly to Serrano Creek. Sediment, manure, feed bags, and trash from human activities at the Facility may further enter Serrano Creek incidentally

during windy conditions due to lack of implemented Best Management Practices (BMPs) to prevent such non-storm water discharges. Coastkeeper is informed and believes that there are various other discharges of pollutants not specifically mentioned herein for which Notice Recipients are liable. Each discharge of pollutants into waters of the United States without a CAFO permit is a violation of Section 301 of the Clean Water Act, 33 U.S.C. §1311.

5. CONCLUSION

In addition to the violations set forth above, this Notice Letter covers all violations of the Clean Water Act by the Notice Recipients as evidenced by information that becomes available to Coastkeeper after the date of this Notice Letter. Specifically, Coastkeeper puts the Notice Recipients on notice that it intends to include all violations of the Clean Water Act in its federal citizen enforcement suit.

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (1997), each separate violation of the Clean Water Act subjects the violator to a penalty of up to $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and $53,484 per day per violation for violations that occurred after November 2, 2015 and assessed on or after January 15, 2018. In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and other such relief as is permitted by law. Lastly, Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits prevailing parties to recover costs and fees.

Coastkeeper has retained legal counsel to represent them in this matter. All communications concerning this notice should be addressed to:

Jennifer F. Novak
Law Office of Jennifer F. Novak
500 Silver Spur Road, Suite 206
Rancho Palos Verdes, California, 90275
(310) 693-0775

During the 60-day notice period, Coastkeeper would like to discuss effective remedies with the Notice Recipients to address the violations noted in this Notice. If the Notice Recipients wish to pursue such discussions, we suggest that it initiate those discussions immediately. At the close of the 60-day notice period, Coastkeeper intends to move forward with litigation to prevent ongoing violations of the Act.

Sincerely,

Sarah J. Spinuzzi
Staff Attorney
Orange County Coastkeeper

cc: See attached service list

Service List

VIA U.S. CERTIFIED MAIL – Return Receipt Requested

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Eileen Sobeck
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